

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 295 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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COMMISSIONER OF INCOME TAX

Versus

RAMILABEN S. BACHKANIWALA

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Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

MR DA MEHTA with MR RK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/09/1999

ORAL JUDGEMENT (Per B.C.Patel, J.)

The Commissioner of Income-tax, Surat has preferred this application under section 256 (2) of the Income-tax Act, 1961 (hereinafter referred to as the Act). The Tribunal was requested to make a reference on the following questions of law:

"1. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in relying on the version of the assessee on the average cost of the colour and chemicals at the rate of Rs.2.68 produced at for the first time in violation to Rules 10 & 29 of the I.T.Act. rules without observing the formalities required therein to draw inference contrary to the facts on record?

2. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the addition of Rs.11,23,572 cannot be made in the block assessment by taking inference from the seized materials?"

2. So far as Question No.2 is concerned, the Tribunal considering the decision of this Court in the case of N.R.PAPER & BOARDS LTD. reported in 234 ITR page 733, by a common judgment, has rejected the application. We have also passed an order in ITA No.266 of 1999 covering this question raised in this application. In view of the decision rendered in ITA No.266 of 1999, the Tribunal has rightly rejected the application so far as Question No.2 is concerned.

3. So far as Question No.1 is concerned, the Tribunal in para 5 of its order has held the cost as reasonable on the basis of the material placed before it in the form of a paperbook, which was also furnished before the Assessing Officer. There was no violation of either Rule 10 or Rule 29 of the ITAT Rules. It appears that the Departmental Representative has not raised any specific objection in that regard. However, he asked for

time which was granted to him. In our opinion, the Tribunal has decided the question on facts. Hence, this application is rejected. Rule is discharged with no order as to costs.

(KMG Thilake)

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